

Tikkun Olam

A MOTHER'S DAY EULOGY FOR FREDERIKA DEMBITZ BRANDEIS

Paul D. Carrington & Sarah Berger

LOUIS DEMBITZ BRANDEIS remains for many of us not merely a hero, but a paradigm of what an American lawyer and judge should be. The traits qualifying him for this elevated position in the history of American law were at least in significant part the consequence of the sustained and enduring influence of his mother. For that reason, we propose to dedicate Mother's Day 2001 to her memory. We believe this to be a fit sequel to last year's remembrance in these pages of Margaret Walker Wythe.¹

To make our point regarding Frederika Brandeis, we first advert to her son. He was a very, very smart man. He graduated from law school at so tender an age that special action of the governing board of Harvard University was required before the Law School could grant him a degree. Yet he had astonished his law teachers with both the care and the thor-

oughness of his examination papers and the prudence of his contribution to case discussion. Repeated efforts were made to recruit him to the Harvard Law faculty.

In part because Louis Brandeis was very, very smart, he was also a very, very successful Boston lawyer. He was extraordinarily quick to assimilate the details of events and relations; he manifested exceptional vision regarding the secondary and tertiary consequences of proposed actions; and he also exhibited extraordinary moral courage in telling clients what they ought to hear, like it or not. For these reasons, a very high value was placed on his counsel. He was a "rainmaker" supreme. Accordingly, he earned a very large income.

Yet Brandeis was also a very, very moral lawyer dedicated to the welfare of his city, state, and nation. Holmes later described him as a man of "exquisite moral susceptibility." He

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¹ Paul D. Carrington & Laura Kelley, *A Mother's Day Eulogy for Margaret Walker Wythe*, 3 *Green Bag* 2d 255 (2000).

advised his business clients to share his dedication to the public good and he declined to represent those he deemed to be predators.

His morality as a citizen was repeatedly demonstrated in his frequent advocacy of public causes. *Pro bono*, he aggressively resisted “special interest” lobbying in the Massachusetts legislature. *Pro bono*, he resolved an insurance scandal by drafting a law authorizing savings banks to write life insurance and then lobbying to secure its enactment. *Pro bono*, over a period of seven years in diverse forums, he successfully attacked the proposed merger of the New Haven Railroad with the Boston & Maine. *Pro bono*, he joined in creating an organization that lobbied in many states for industrial accident compensation and other legal protections of workers. *Pro bono*, he defended in the Supreme Court the Oregon law limiting the working hours of women and in doing so invented the “Brandeis brief” providing the Court with the available social and economic data justifying the statute. *Pro bono*, he served as the architect of President Wilson’s New Freedom, strengthening antitrust laws, exempting labor unions from their application, and creating the Federal Trade Commission and the Federal Reserve Bank. In all these activities, he shared the Jacksonian sentiments of those who denounced “the privilege-seeking and favor-seeking classes.”²

Despite his impressive earnings, Brandeis was indifferent to personal wealth. When a partner suggested that he could earn more money for their firm if he spent less time assailing the New Haven Railroad, he insisted on paying the firm an amount equal to the value of the time he had invested in the cause, thus setting a standard of commitment to his partners that few doers of good have since equaled. He invested exclusively in government bonds but lived so modestly that he

accumulated a very large estate.

When Brandeis was nominated for the Court in 1916, Wall Street was said to “groan like the echo of a national disaster.” Six Presidents of the American Bar Association testified against his confirmation; typical of their reasons was that his presentation of the “Brandeis” brief exhibited a fundamental misperception of the law in its disrespect for its majestic independence from morality and politics. Nevertheless, he soon won recognition on all sides as a Justice greatly to be admired for his attention to facts and his stern self-control. He was quick to see in himself as well his colleagues the urge to deploy power to impose one’s personal view of moral propriety on others, and he was therefore perhaps the most consistent advocate of judicial self-restraint ever to sit on the Court. He opposed Chief Justice Taft’s plan for a new courthouse, likening it to the Temple of Karnak, and, expressing concern that so pretentious a structure would overinflate the egos of the Justices, he refused to occupy chambers in that building.

In all these respects, Louis Brandeis was a truly extraordinary man for whom it was entirely fitting to name both a university in Massachusetts and the law school at the University of Louisville. But also, in all these respects, he was his mother’s boy, and that is our point. Frederika Dembitz Brandeis was an equally extraordinary woman.

Frederika was born and raised in Prague by a family that was part of an Austrian-Jewish sect distinguished by the belief that one of its members was in fact the Messiah. Her clan was thus a minority within a Jewish community that was itself a minority within the Czech community in Austria. Politically, the clan supported the unsuccessful revolutions of 1848 that aimed to replace European plutocra-

² The phrase comes from the Democratic Party platform of 1912, which he may have had a hand in drafting.

cies with democratic governments. Embattled, they moved as a group to Indiana, bringing with them many trunkloads of books and two grand pianos.

Frederika was then twenty years old. She was regarded as an exceptionally beautiful woman. Having lost her mother, she took it upon herself to raise her younger brother. In America, she soon married another member of the clan, Adolph Brandeis, and they settled in Louisville where he started a grain business. Like many immigrants, they were soon passionately attached to their new country and to the American Creed stated in the Declaration of Independence. They were ardent abolitionists living in a slave state.

Frederika was fluent in French and German, and could read the classics in Latin and Greek. She could recite much of the work of the poet Schiller and was a close student of Goethe; she therefore introduced her children to those authors at an early age, in lieu of any exposure to literature written for children. On her violin, she introduced her children to Beethoven and Mozart. She was also competent as a poet, a dancer, and a dramatist, performing in all of those arts for her children and neighbors. She was intensely interested in politics and world affairs. Dinner discussions at her table were conducted in German, and were exclusively devoted to world affairs, the arts, and whatever her children had been reading.

Frederika did not observe the ceremonies of

Judaism and did not instruct her children in the Jewish faith. She affirmed to them "that sin cannot be expiated by going to divine service" and advised that "only goodness and truth and conduct that is humane and self-sacrificing towards those who need us can bring God



Frederika Brandeis

Courtesy Special Collections, Brandeis University Libraries.

nearer to us, and that our errors can only be atoned by our acting in a more kindly spirit. Love, virtue, and truth are the foundation upon which the education of children must be based. They endure forever."³

Despite her rejection of the formalities of Judaism, her affirmations were a reflection of a spirit extolled by the Jewish faith as *tikkun*

³ Reminiscences of Frederika Dembitz Brandeis 32.

olam, meaning “healing the world.” As Marc Galanter has observed, her eclectic form of Judaism “had a formulation of going beyond the outer shell of the commentators on the Talmud to give Judaism a higher and broader significance by striving to perfect the world.”⁴

Frederika later explained to her children that she had raised them without religious belief because she “wanted to give them something that neither could be argued away nor would have to be given up as untenable, namely, a pure spirit and the highest ideals as to morals and love.” Louis adhered to her religious teachings. He was never an observant Jew and his wife even became a Unitarian. He was, however, active in the Zionist movement because he perceived the Israeli *kibbutzim* (their small farming communities) to be models for the communitarian life style that he believed to be the best source of human happiness and the

spirit of *tikkun olam*.

Frederika’s maternal efforts were not without reward. Louis wrote her almost every day of her life after he left home to attend law school. It is heartening to imagine her reaction to the second birthday greeting she received from him in 1888. It read:

I must send you another birthday greeting and tell you how much I love you, that with each day I learn to extol your love and your worth more – and that when I look back over my life, I can find nothing in your treatment of me that I would alter. You often said, dearest mother, that I find fault – but I always told you candidly that I felt and sought to change only that little which appeared to me to be possible of improvement. I believe, most beloved mother, that the improvement of the world, reform, can only arise when mothers like you are increased thousands of times and have more children.⁵ GB

4 A Vocation for Law? American Jewish Lawyers and Their Antecedents, 26 Fordham Urban L.J. 1132, 1133 (1999).

5 1 Letters of Louis D. Brandeis 75 (Melvin Urofsky & David W. Levy eds., New York 1971).